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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Handwritten signature]

MAR 29 2004

FILE:

Office: Vermont Service Center

Date:

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

[Handwritten signature of Robert P. Wiemann]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director denied the application because the applicant failed to establish he continuously had resided in the United States since February 13, 2001.

On appeal, counsel asserted the applicant's claim of eligibility for TPS and submitted additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for temporary protected status only if such alien establishes that he or she:

- (a) is a national of a state designated under section 244(b) of the Act;
- (b) has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) has continuously resided in the United States since such date as the Attorney General may designate;
- (d) is admissible as an immigrant under section 244.3;
- (e) is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) registers for TPS during the initial registration period, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (i) the applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) the applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) the applicant is a parolee or has a pending request for reparole; or
 - (iv) the applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On August 20, 2002, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. Copies of pay-stubs for the pay periods of April 14, 2001 to May 25, 2001, February 8 - 20, 2002, June 24 - 30, 2002 and July 22 - 28, 2002.
2. Copies of money transfer receipts from the Bancomercio dated July 27, 2001 and November 9, 2001.
3. A copy of an auto insurance plan application for a vehicle purchased in August 2001.

4. A copy of a letter from the applicant's vehicle finance company dated September 4, 2001.
5. Copies of receipts from the Community Insurance Agency, Inc., dated October 5, 2001 and January 5, 2002.
6. Copies of the applicant's Statement of Accounts dated December 19, 2001, March 20, 2002, and May 20, 2002.
7. Copy of a deposit slip dated September 9, 2002.
8. Copy of a statement of account as of June 15, 2002 from Transouth Finance.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on November 5, 2002. On appeal, the applicant, through counsel, reasserted his claim and submitted the following documentation:

9. A copy of a letter dated March 21, 2001, from Reverend Eugenio Hoyos, Associate Pastor of the St. Anthony of Padua Catholic Church, in Falls Church, Virginia, who attested that the applicant had been a registered parishioner since February 10, 2001.
10. An affidavit signed on November 11, 2002, from Mr. William Izaguirre who testified that the applicant had lived with him in Falls Church, Virginia, from February 9, 2001 until December 4, 2002.

The affiant to the document in No. 10 above testified that the applicant had lived with him since February 9, 2001; however, the applicant stated on his application for TPS and on his application for employment authorization received on May 21, 2001, that he did not enter the United States until February 10, 2001. In addition, according to the applicant's own statements, the applicant, somehow was able to enter the United States in California, travel to Virginia, and register with his church in Falls Church, Virginia, all on the same day, February 10, 2001.

Also, it appears that the facsimile of the letter from the church in Virginia is a form letter. While the associate pastor states that membership and database records indicate the applicant's membership since that date; no evidence of these assertions is included in the record. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The applicant has failed to submit any objective evidence to explain or justify the discrepancies noted above. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Therefore, it must be concluded that the applicant has failed to meet his burden of proving that he meets the requirements for TPS.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.



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An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.